CALIFORNIA NEWS PUBLISHERS ASSOCIATION
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March 28, 2019

Honorable Laura Friedman
California State Assembly
State Capitol Room 2137
Sacramento, CA 95814

RE: AB 700 (OPPOSE UNLESS AMENDED)

Dear Assemblymember Friedman:

I am writing on behalf of the California News Publishers Association to express CNPA's opposition to your AB 700, unless amended, as it would undermine the California Public Records Act (CPRA) and the public's right to know by exempting vast numbers of records held by public postsecondary institutions.

AB 700 would create a new exemption in the CPRA for records related to research conducted at public postsecondary institutions. CNPA understands that the bill is an attempt to address situations in which researchers at public universities have been targeted by advocacy groups with an interest in the subject of the research. Unfortunately, the approach taken in AB 700 is to create a broad exemption to address this relatively narrow issue, upending the CPRA's general presumption in favor of disclosure of public records. In doing so, AB 700 not only undermines the public interest in disclosure of public records, it also empowers the very advocacy groups the bill is intended to thwart.

AB 700 is an Overbroad Solution to a Narrow Problem

AB 700 is intended to address the alleged abuse of the CPRA by requesters who obtain records relating to researchers and then use that information for personal gain or to attempt to discredit the researchers. CNPA is sympathetic to concerns that the disclosure of certain types of information used by public university researchers may reduce the ability of public university researchers to collaborate with researchers from other institutions, but we disagree with the notion that protecting public employees from scrutiny is a sufficient justification for creating a new exemption to the CPRA.

AB 700, in its current form and as proposed to be amended, is far too broad. It exempts ten broad categories of information from public disclosure, including research methods, unpublished data, and all correspondence related to research whether or not part of the peer review process and regardless of whether the research has been published. To the extent there is a legitimate problem of alleged abuse of public records requests, the problem is narrow and should be addressed accordingly.

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AB 700 is Antithetical to the Structure and Purpose of the CPRA

Access to public records is of such paramount importance that it is enshrined in Article I, Section 3 of the California Constitution. The CPRA is the most important law providing the California public with access to records held by state and local agencies, and it is built on the concept that public records should generally be disclosable except in limited circumstances. As described the California Attorney General's Office, "[t]he fundamental precept of the CPRA is that governmental records shall be disclosed to the public, upon request, unless there is a **specific reason not to do so**." [emphasis added][1]

AB 700 would take this "fundamental precept" in favor of disclosure with only narrow exceptions and flip it on its head by broadly exempting records "related to research" held by public postsecondary institutions and, as proposed to be amended, then listing narrow categories of records that are subject to disclosure. This approach is antithetical to purpose of the CPRA, and inconsistent with its structure. To the extent a new exemption to the CPRA is needed, it should be narrowly drawn to specifically address only the circumstances that are identified and which existing law fails to protect. Toward this end, AB 700 falls short.

AB 700 Will Protect Bad Actors, Including Those the Bill is Intended to Hinder

Perhaps the most concerning aspect of AB 700 is the fact that it will prevent journalists from investigating allegations of researcher misconduct and/or improper influence by the very stakeholders at which the bill is aimed. In just the past several weeks, two major media outlets have published stories of researcher misconduct and improper influence that likely would not have come to light but for the ability to access public records:

- On February 25, 2019, *the Washington Post* reported on communications between an attorney for the payday lending industry and a professor at Kennesaw State University, and how those communications may have influenced the professor's research on how borrowers were affected by payday lending practices.[2]

- On March 20, 2019, *ProPublica Illinois* published a story about its investigation of a researcher at the University of Illinois at Chicago who violated research protocols, putting children with bipolar disorder at risk.[3] The story revealed that not only had the researcher engaged in such serious misconduct that the National Institute of Mental Health required repayment of grant money it had provided, but that the university had failed to properly oversee the research.

CNPA recognizes that most researchers do not engage in the type of conduct on display in these news stories, but the reality is that even well-intentioned exemptions to the CPRA can protect the worst actors.

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[1] *Summary of California Public Records Act, 2004*, California Office of the Attorney General, p. 2. http://ag.ca.gov/publications/summary_public_records_act.pdf

[2] Merle, Renae. "How a payday lending industry insider tilted academic research in its favor." *The Washington Post*, February 25, 2019. https://www.washingtonpost.com/business/2019/02/25/how-payday-lending-industry-insider-tilted-academic-research-its-favor/

[3] Cohen, Jodi S. "University of Illinois at Chicago Missed Warning Signs of Research Going Awry, Letters Show." *ProPublica Illinois*, March 20, 2019. https://www.propublica.org/article/university-of-illinois-chicago-uic-research-misconduct-letters-documents

As proposed to be amended, AB 700 would state that records of institutional audits and disciplinary actions are disclosable. However, CNPA is concerned that this provision is insufficient to protect the public's interest in knowing about researcher misconduct. Because the provision proposed to be added would only apply in situations in which institutional audit and disciplinary systems have done their jobs, it would leave cases where safeguards have failed – arguably most the newsworthy of all – shielded from public scrutiny.

The proposed amendments to AB 700 would also state that communications between funders and researchers would be disclosable, but again, this provision is insufficient to ensure public access to records that evidence improper influence by outside groups. By limiting the types of communications that are disclosable to only those between funders and researchers, AB 700 allows interested groups to easily sidestep the disclosure of records by having an intermediary provide the funding or engage in the communications.

CNPA recognizes the difficulty of drafting an exemption that is narrowly tailored enough to protect the public interest in disclosure of most public records while still addressing the problem at hand. But, the fact that the task is difficult does not mean that it is not worth attempting. CNPA strongly believes that striking that delicate balance is crucial to continuing to protect the public's right to know what government agencies are doing on its behalf.

CNPA is committed to continuing to work with your office to achieve a solution that is workable but for the reasons stated above we respectfully oppose AB 700 unless it is amended to narrow the proposed exemption.

Sincerely,

Whitney L. Prout
CNPA Staff Attorney

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